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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAJINDER KUMAR JHAMB,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74424

Agency No. A70-947-994

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted November 8, 2005^{**}

Before: WALLACE, LEAVY and BERZON, Circuit Judges.

Rajinder Kumar Jhamb, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen exclusion proceedings due to ineffective assistance of counsel. We review the

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

denial of a motion to reopen for abuse of discretion, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

The BIA did not abuse its discretion in denying Jhamb's motion to reopen as untimely, because Jhamb failed to explain why the motion to reopen was filed more than a year after he retained new counsel. *See id.* at 897-98 (holding that a petitioner must act with due diligence when pursuing an ineffective assistance of counsel claim to benefit from equitable tolling of deadlines).

PETITION FOR REVIEW DENIED.